

Introduced by Senator Torlakson

February 18, 2005

An act to amend Section ~~150 of 3030~~ of, and to add Section 3030.5 to, the Family Code, relating to support obligations.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Torlakson. ~~Support obligations~~ *Custody and visitation: sex offenders.*

Existing law defines "support" as a support obligation owing on behalf of a child, spouse, or family, or an amount owing pursuant to a specified provision of the Family Code *prohibits a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.*

This bill would ~~make technical, nonsubstantive changes to that definition~~ *expand that provision to prohibit a court from granting custody of, or unsupervised visitation with, a child to a person if that person resides with either a registered sex offender whose victim was a child or another person who has been convicted of one of specified crimes against a child. The bill would also provide that an existing custody or visitation order shall be modified or terminated consistent with that provision, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 150 of the Family Code is amended to~~
2 ~~read:~~

3 ~~SECTION 1. Section 3030 of the Family Code is amended to~~
4 ~~read:~~

5 3030. (a) (1) No person shall be granted physical or legal
6 custody of, or unsupervised visitation with, a child if the person
7 *or any person residing in his or her household* is required to be
8 registered as a sex offender under Section 290 of the Penal Code
9 where the victim was a minor, or if the person has been convicted
10 under Section 273a, 273d, or 647.6 of the Penal Code, unless the
11 court finds that there is no significant risk to the child and states
12 its reasons in writing or on the record.

13 (2) *The fact that a child is permitted unsupervised contact with*
14 *a person who is required to be registered as a sex offender under*
15 *Section 290 of the Penal Code, where the victim was a minor, or*
16 *with a person who has been convicted under Section 273a, 273d,*
17 *or 647.6 of the Penal Code, shall be prima facie evidence that*
18 *the child is at significant risk. When making a determination*
19 *regarding significant risk to the child, the prima facie evidence*
20 *shall constitute a presumption affecting the burden of producing*
21 *evidence.*

22 (b) No person shall be granted custody of, or visitation with, a
23 child if the person has been convicted under Section 261 of the
24 Penal Code and the child was conceived as a result of that
25 violation.

26 (c) No person shall be granted custody of, or unsupervised
27 visitation with, a child if the person has been convicted of murder
28 in the first degree, as defined in Section 189 of the Penal Code,
29 and the victim of the murder was the other parent of the child
30 who is the subject of the order, unless the court finds that there is
31 no risk to the child's health, safety, and welfare, and states the
32 reasons for its finding in writing or on the record. In making its
33 finding, the court may consider, among other things, the
34 following:

35 (1) The wishes of the child, if the child is of sufficient age and
36 capacity to reason so as to form an intelligent preference.

37 (2) Credible evidence that the convicted parent was a victim of
38 abuse, as defined in Section 6203, committed by the deceased

parent. That evidence may include, but is not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of domestic abuse.

(3) Testimony of an expert witness, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women’s syndrome.

Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child’s custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent’s place of residence, place of employment, or the child’s school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 2. Section 3030.5 is added to the Family Code, to read:

3030.5. (a) An order granting physical or legal custody of, or unsupervised visitation with, a child shall be modified or terminated upon the petition of one or both parents or on the court’s own motion under either of the following circumstances, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record:

(1) The person who has been granted physical or legal custody of, or unsupervised visitation with the child is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or has been convicted under Section 273a, 273d, or 647.6 of the Penal Code.

(2) The person who has been granted physical or legal custody of, or unsupervised visitation with, the child resides with another person who is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or has been convicted under Section 273a, 273d, or 647.6 of the Penal Code.

1 **(b)** *The fact that a child is permitted unsupervised contact with*
2 *a person who is required to be registered as a sex offender under*
3 *Section 290 of the Penal Code, where the victim was a minor, or*
4 *with a person who has been convicted under Section 273a, 273d,*
5 *or 647.6 of the Penal Code, shall be prima facie evidence that*
6 *the child is at significant risk. When making a determination*
7 *regarding significant risk to the child, the prima facie evidence*
8 *shall constitute a presumption affecting the burden of producing*
9 *evidence.*

10 ~~150. “Support” refers to a support obligation owing on behalf~~
11 ~~of a child, spouse, or family, or an amount owing pursuant to~~
12 ~~Section 17402. It also includes support that is past due or in~~
13 ~~arrears. “Support,” when used with reference to a minor child or~~
14 ~~a child described in Section 3901, includes maintenance and~~
15 ~~education.~~